

OFFICE OF
APPELLATE COURTSSTATE OF MINNESOTA
IN SUPREME COURT

AUG 17 2006

Court File No. A06-1508

FILED

Louis H. Reiter,

Petitioner,

vs.

*MOTION TO DISMISS*Mary Kiffmeyer, individually and as
Secretary of State of Minnesota;

Respondent

and

Congressman Gil Gutknecht,

Intervenor-Respondent.

TO: Clerk, Minnesota Appellate Courts, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155; Alan W. Weinblatt, Luke M. Kuhl, Weinblatt & Gaylord, PLC, Suite 300 Kellogg Square, 111 East Kellogg Boulevard, St. Paul, MN 55101, Attorneys for Petitioner Louis H. Reiter; Minnesota Secretary of State Mary Kiffmeyer, c/o Alberto Quintela, Minn. State Office Building #180, St. Paul, MN, 55101; Christie Bennett Eller, Office of the Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101.

Intervenor-Respondent Congressman Gil Gutknecht, by and through his undersigned counsel of record, hereby moves the Court for an Order dismissing the within action on the following grounds:

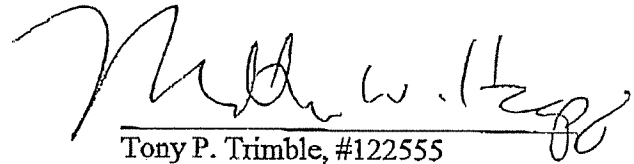
1. Petitioner has failed to meet his burden of proof in demonstrating that Congressman Gutknecht should be removed from September 12, 2006 primary ballot for U.S. House of Representatives in the First Congressional District of Minnesota ("First District") because Minnesota Statutes §§ 204B.03, 204B.08 and 204B.11 do not require that signatures on a petition in lieu of filing fee be signed within the time frame applicable to signatures on a nominating petition under Minnesota Statutes § 204B.08

2. The determination of the nomination of the Republican candidate for U.S. House of Representatives in the First District, including whether Intervenor-Respondent should receive such nomination, is a question that should be left to those persons voting in the September 12, 2006 primary for the First District. The drastic result sought by Petitioner is wholly unjustified as a matter of law.

Accordingly, Intervenor-Respondent respectfully requests this Court to dismiss the Petition in its entirety with prejudice.

This Motion is supported by the Memorandum of Law and affidavits and exhibits submitted contemporaneously herewith, the record before this Court and the arguments of counsel at any hearing(s) in this matter.

Dated: August 17, 2006



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Congressman Gil Gutknecht*

STATE OF MINNESOTA

IN SUPREME COURT

Court File No. A06-1508

Louis H. Reiter,

Petitioner,

vs,

Mary Kiffmeyer, individually and as
Secretary of State of Minnesota;

Respondent

and

Congressman Gil Gutknecht,

Intervenor-Respondent.

**MEMORANDUM OF LAW OF
INTERVENOR-RESPONDENT
CONGRESSMAN GIL
GUTKNECHT IN OPPOSITION
TO PETITION**

This Memorandum of Law is submitted on behalf of Intervenor-Respondent Congressman Gil Gutknecht ("Congressman Gutknecht") in opposition to the Petition for an Order to Show Cause Pursuant to Minn. Stat. § 204B.44 dated August 11, 2006 ("Petition") filed with this Court and in support of Congressman Gutknecht's motion to intervene and motion to dismiss. Congressman Gutknecht's undersigned counsel request opportunity to be heard at any oral argument heard by this Court with respect to the Petition.

FACTUAL BACKGROUND

Congressman Gutknecht (not "Gutnecht" as repeatedly misspelled throughout Petitioner's pleadings) is and has been the incumbent United States Representative from the First Congressional District of the State of Minnesota ("First District") since he was first elected in November 1994. On July 5, 2006, Congressman Gutknecht filed with the Minnesota Secretary

place of filing fee pursuant to Minnesota Statutes §§ 204B.03 and 204B.11 relative to his candidacy for the Republican nomination for United States Representative from the First District. (Affidavit of Nels Pierson, ("Pierson Aff."), ¶ 2.)

Congressman Gutknecht's campaign staff and volunteers gathered signatures on the petitions in place of filing fee in accordance with their understanding of Minnesota election law and rules promulgated by the Secretary of State of Minnesota that these signatures could be gathered at any time after the Minnesota Secretary of State made the petition form available. (Id., ¶ 3.) These signatures were collected on forms published and made available by the Minnesota Secretary of State's office, as downloaded by Congressman Gutknecht's campaign from the Minnesota Secretary of State's website. (Id., ¶ 4.) These petitions clearly stated at the top "MINNESOTA PETITION IN PLACE OF FILING FEE" in capitalized and bold letters. (Affidavit of Matthew W. Haapoja, ("Haapoja Aff."), Exhibit C; also part of the record in this matter as filed by Petitioner's counsel.)

The purpose of Congressman Gutknecht's utilization of the petition in place of filing fee was to avoid payment of the filing fee requirement under Minnesota Statutes § 211B.11. (Pierson Aff., ¶ 5.) Congressman Gutknecht's campaign did not submit the petition in place of filing fee for the purpose of seeking placement of the name of Congressman Gutknecht's name on the September 2006 primary ballot as a minor party candidate. (Id., ¶ 6.) Rather, Congressman Gutknecht is a candidate for the Republican party nomination and received the endorsement of the delegates of the Republican Party of Minnesota from the First District at a congressional district endorsing convention. (Id., ¶ 6.)

Upon filing the Affidavit of Candidacy (Id., Exhibit A) and petition in place of filing fee by Congressman Gutknecht, the Minnesota Secretary of State accepted the Affidavit of Candidacy and petition in place of filing fee as submitted and issued to Congressman

Gutknecht's campaign a Receipt for Petition 2006 State General Election dated July 5, 2006 ("Receipt"). (Id., ¶ 7, Exhibit B.) The Receipt contained the factually incorrect statement that Congressman Gutknecht's petition in place of filing fee was a "Nom. Petition in place of filing fee". (Id.) On August 11, 2006 the Minnesota Secretary of State's office forwarded to Congressman Gutknecht's campaign supplemental correspondence which represented that the Receipt was erroneous and the Receipt should have indicated "Minnesota Petition in Place of Filing Fee pursuant to Minn. Stat. 204B.11". (Id., ¶ 8, Exhibit B.)

In every primary since his first election in 1994, when Democrat Joan Anderson Growe was Secretary of State of Minnesota, Congressman Gutknecht has availed himself of the opportunity under Minnesota law to file a petition in place of filing fee along with his Affidavit of Candidacy. (Id., ¶ 9; Affidavit of Mike Alm ("Alm Aff."), ¶ 4.) Many, if not most, of the signatures on each of these petitions in place of filing fee were gathered prior to the period of time within which candidates were permitted to file to run for Minnesota elective office. (Pierson Aff., ¶ 9; Alm Aff., ¶ 4.)

At no time since Congressman Gutknecht's first election to U.S. Congress in 1994 until the present did former Secretary of State Joan Growe, current Secretary of State Mary Kiffmeyer or any employee or representative of either of the same, communicate to Congressman Gutknecht or any of his campaign staff that signatures on the petition in place of filing fee under Minn. Stat. § 204B.11 were required to be collected/obtained during any particular window of time. (Pierson Aff., ¶ 10; Alm Aff., ¶ 5.) Moreover, at no time since Congressman Gutknecht's first election to U.S. Congress in 1994 until the present did former Secretary of State Joan Growe, current Secretary of State Mary Kiffmeyer, or any employee or representative of either of the same, ever reject Congressman Gutknecht's petition in place of filing fee due to untimely signatures on the petition. (Pierson Aff., ¶ 11, Exhibit C; Alm Aff., ¶ 6.)

Exhibit A to the Haapoja Affidavit is a true and correct copy of a printed page from the Minnesota Secretary of State's website, www.sos.state.mn.us, which describes the petition in place of filing fee and which states (in pertinent part, emphasis added):

Petition in place of filing fee (204B.11)

- Instead of paying the filing fee, a candidate may present this petition at the same time the affidavit of candidacy is filed. The petition may be signed by any individual eligible to vote for the candidate.
-
- A petition in place of filing fee may be signed at any time. A nominating petition that is also used for a petition in place of filing fee may only be signed during the filing period.

(Haapoja Aff., Exhibit A.)

Exhibit B to the Haapoja Affidavit is a true and correct copy of a blank affidavit of candidacy downloaded from the Minnesota Secretary of State's website, www.sos.state.mn.us, which states in pertinent part:

Note: If filing for partisan office *and not a major party candidate*, you must file both an affidavit of candidacy and a nominating petition: 'Candidates for any partisan office who do not seek the nomination of a major political party shall be nominated by nominating petition as provided in sections 204B.07 and 204B.08, and...shall file an affidavit of candidacy as provided in section 240B.06.' (Minn. Stat. section 204B.03).

(Haapoja Aff., Exhibit B.)

On or about August 9, 2006, Petitioner Louis H. Reiter served the Petition upon the Secretary of State of Minnesota and filed the Petition with the Court. The intent of the Petition is to seek an order of this Court restraining the Secretary of State of Minnesota from placing the name of Congressman Gutknecht on the primary ballot for Republican nomination from the First District.

On August 11, 2006, this Court issued an Order directing that the Petition and supporting documents be served upon Congressman Gutknecht and that Congressman Gutknecht had until 4:30 p.m., Thursday, August 17, 2006 to submit any written response to the Petition and any

supporting materials. This Memorandum of Law is served and filed pursuant to that Order. By this Memorandum of Law, and the accompanying Motion to Intervene (filed with this Court August 15, 2006) and Motion to Dismiss (filed contemporaneously herewith), Congressman Gutknecht seeks an Order granting his motion to intervene and an Order dismissing the Petition in its entirety with prejudice.

APPLICABLE MINNESOTA STATUTES

Minn. Stat. § 204B.03 provides [emphasis added]:

204B.03 Manner of nomination. *Candidates of a major political party for any partisan office except presidential elector and all candidates for nonpartisan office shall apply for a place on the primary ballot by filing an affidavit of candidacy as provided in section 204B.06, and except as otherwise provided in section 204D.07, subdivision 3, shall be nominated by primary. Candidates for any partisan office who do not seek the nomination of a major political party shall be nominated by nominating petition as provided in sections 204B.07 and 204B.08, and...an affidavit of candidacy as provided in section 204B.06.*

Minn. Stat. § 204B.07 provides:

204B.07 Nominating petitions. Subdivision 1. Form of petition. A nominating petition may consist of one or more separate pages each of which shall state: (a) The office sought; (b) The candidate's name and residence address, including street and number if any; and (c) The candidate's political party or political principle expressed in not more than three words...

Minn. Stat. § 204B.071 provides:

204B.071 Petitions; rules of the secretary of state. The secretary of state shall adopt rules governing the manner in which petitions required for any election in this state are circulated, signed, filed, and inspected. The secretary of state shall provide samples of petition forms for use by election officials.

Minn. Stat. § 204B.08 provides:

204B.08 Signing petitions. Subdivision 1. Time for signing. *Nominating petitions* shall be signed during the period when petitions may be filed as provided in section 204B.09.

Subd. 3. Number of signatures. The number of signatures required on a nominating petition shall be as follows:....(b) For a congressional office, five percent of the total number of individuals voting in the district at the last preceding state general election, or 1,000, whichever is less...

Minn. Stat. § 204B.11 provides [emphasis added]:

204B.11 Candidates; filing fees; petition in place of filing fee. Subdivision 1. Amount; dishonored checks; consequences. Except as provided by subdivision 2, a filing fee shall be paid by each candidate who files an affidavit of candidacy...

Subd. 2. Petition in place of filing fee. At the time of filing an affidavit of candidacy, a candidate may present a petition in place of the filing fee. The petition may be signed by any individual eligible to vote for the candidate. *A nominating petition filed pursuant to section 204B.07...is effective as a petition in place of a filing fee if the nominating petition includes a prominent statement informing the signers of the petition that it will be used for that purpose.* The number of signatures on a petition in place of a filing fee shall be as follows:...(b) for a congressional office, 1,000...An official with whom petitions are filed shall make sample forms for petitions in place of filing fees available upon request.

JURISDICTION

Intervenor-Respondent Congressman Gutknecht agrees that the Minnesota Supreme Court has jurisdiction over this matter pursuant to Minn. Stat. § 204B.44.

PARTIES – MOTION TO INTERVENE

Rule 24.01 of the Minnesota Rules of Civil Procedure provides:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Minn. R. Civ. P. 24.01. The policy of encouraging intervention whenever possible is favored by courts. *Blue Cross/Blue Shield of Rhode Island v. Flam by Strauss*, 509 N.W.2d 393, 396 (Minn.Ct.App.1993), citing *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974). Recognition of this principle “requires a liberal application of the rule.” *Id.*

Minnesota appellate courts have established a four-part test for intervention of right under Rule 24.01. An applicant must show: (1) a timely application; (2) an interest relating to the transaction which is the subject of the action; (3) circumstances showing that disposition may as

a practical matter impair the applicant's ability to protect that interest; and (4) that applicant's interest is not adequately represented by existing parties. *BE & K Const. Co. v. Peterson*, 464 N.W.2d 756, 757-58 (Minn.Ct.App. 1991), citing *Minneapolis Star Tribune v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986); see also *Erickson v. Bennett*, 409 N.W.2d 884 (Minn. 1987).

Congressman Gutknecht's motion to intervene should be granted in order to protect his compelling interests that will be substantially affected by this action. Congressman Gutknecht is and has been the incumbent United States Representative from the First District since his election in 1994. Congressman Gutknecht has received the endorsement of the delegates of the Republican Party of Minnesota from the First District at a congressional district endorsing convention. The Petition seeks to remove Congressman Gutknecht's name from the September 12, 2006 primary ballot for the Republican nomination for U.S. Representative from the First District. Accordingly, Congressman Gutknecht is a true party in interest because the relief requested would effectively remove him from eligibility to be re-elected to the Congressional seat which he now holds, therefore impairing his interest. Hence, Congressman Gutknecht requests that this Court grant his motion to intervene under MRCP Rule 24.01.

Counsel for Intervenor-Respondent have no knowledge regarding Petitioner's standing to bring this action other than knowledge on information and belief that Petitioner is an active member of the Democratic-Farmer-Labor ("DFL") Party and a supporter of Congressman Gutknecht's DFL opponent. There has been no time since the Petition was filed to determine factually whether Petitioner is a qualified voter or even lives in the First District. Intervenor-Respondent asserts that the real party in interest on Petitioner's side is Congressman Gutknecht's DFL opponent who should be joined as a co-Petitioner.

Respondent Mary Kiffmeyer is the duly elected and acting Secretary of State of the State of Minnesota. As such, she is charged with supervision of the primary ballot for the First

District with respect to the primary to be held on September 12, 2006. Secretary of State Kiffmeyer otherwise has no personal or official stake or interest in the outcome of this matter.

SUMMARY OF ARGUMENT

Intervenor-Respondent Congressman Gutknecht requests that the Petition be dismissed in its entirety on the following grounds:

1. Petitioner has failed to meet his burden of proof in demonstrating that Congressman Gutknecht should be removed from September 12, 2006 primary ballot for U.S. House of Representatives in the First District because Minnesota Statutes §§ 204B.03, 204B.08 and 204B.11 do not require that signatures on a petition in place of filing fee be signed within the time frame applicable to signatures on a nominating petition under Minnesota Statutes § 204B.08.

2. The determination of the nomination of the Republican candidate for U.S. House of Representatives in the First District, including whether Intervenor-Respondent should receive such nomination, is a question that should be left to those persons voting in the September 12, 2006 primary for the U.S. House of Representatives in the First District. The drastic result sought by Petitioner is wholly unjustified as a matter of law.

ARGUMENT

Pursuant to Minn. Stat. § 204B.44 (2005), this Court may issue an Order to remedy any claimed defect in a ballot, including the removal of the name of a candidate on the primary ballot. In *Erlandson v. Kiffmeyer*, 659 N.W.2d 724 (Minn. 2003), this Court described the standard of review in an “errors and omissions” challenge under this statute:

In assessing whether the conduct challenged was an error, omission or wrongful act, we must interpret and apply the applicable election statutes. Our review must be informed by the recognition that ‘[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.’ *Burson v. Freeman*, 504 U.S. 191, 199, 112 S. Ct. 1846, 119 L.Ed.2d 5(1992)(quoting *Wesberry v. Sanders*, 376

U.S. 1, 17, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964)). 'The right to vote...is a fundamental and personal right essential to the preservation of self-government.' *State ex rel. South St. Paul v. Hetherington*, 61 N.W.2d 737, 741 (Minn. 1953).

659 N.W.2d at 729-730 (emphasis added).

In *Moe v. Alsop*, 180 N.W.2d 255 (Minn. 1970), a case heavily cited within Petitioner's Plaintiff's Supplemental Memorandum of Law in Support of Petition for an Order to Show Cause Pursuant to Minn. Stat. § 204B.44 dated August 11, 2006 ("Petitioner's Supplemental Brief"), this Court clearly held that the burden of proof with respect to petitions submitted relative to Minn. Stat. § 204B.44 lies with the petitioner. *Moe* held that proof of entitlement to success on a petition for an order which would prevent placement of a candidate's name on a ballot must be "clearly established" and that "the burden upon the applicant to establish the ineligibility must be a heavy one in view of the drastic nature of an affirmative order, both to the candidate and to the electorate." *Moe*, 180 N.W.2d at 260. The *Moe* Court emphasized the applicability of this standard in legislative disputes (of course, the instant matter involves a primary regarding the United States House of Representatives, a legislative body):

This requirement is particularly important in the case of a candidacy for legislative office in view of the safeguard of ultimate determination by the legislature if this court declines to act. Other considerations may be present in the situation of candidacy for other offices where the power of corrective action is vested solely in the courts.

Id. at n. 11.

Based on the foregoing, this Court should tread lightly with respect to Petitioner's purely political attempt to remove a sitting U.S. Representative from the 2006 Republican primary ballot, which would thereby deprive the Republican voters of the First District of an opportunity to confer the Republican nomination on the Congressman who has served them since January 1995. Because Petitioner has not met his "heavy burden" of clearly establishing that Minnesota law has been violated in a manner mandating the removal of Congressman Gutknecht's name from the ballot, the Petition should be dismissed in its entirety with prejudice.

I. MINNESOTA STATUTES CHAPTER 204B DOES NOT IMPOSE A TIME PERIOD ON SIGNATURES TO A PETITION IN PLACE OF FILING FEE.

A. Petitioner's assertion that Minnesota Statutes § 204B.08, subd. 1 applies to a "petition in place of a filing fee" is wholly without merit.

The Petition seeks to commingle and confuse clear provisions within the Minnesota election law, Minnesota Statutes Chapter 204B *et seq.*, ("Chapter 204B"), in a manner which is wholly and completely unjustified by the plain and unambiguous language of the law. Petitioner's desired partisan goal is to remove a sitting U.S. Representative from the primary ballot through a childish "gotcha game". However, Petitioner's heavy burden under *Moe* and *Erlandson* require more than mere wordplay to justify denying the First District's Republican primary voters their choice in conferring the Republican nomination on a candidate for the U.S. House of Representatives. As such, the Petition must be denied and dismissed in its entirety with prejudice.

Nominating Petition

Minn. Stat. § 204B.03 imposes different ballot access requirements on major party (Republican/DFL) candidates and minor party candidates¹. A major party candidate for federal office (such as Congressman Gutknecht) is required to file with the Minnesota Secretary of State an affidavit of candidacy as a means of qualifying for the ballot, while a minor party candidate desiring to run for the same office must file a document referred to throughout Chapter 204B as a "nominating petition." *Major party candidates are not required to file a nominating petition as a matter of gaining ballot access.* Minn. Stat. § 204B.03.

The affidavit of candidacy form promulgated by the Minnesota Secretary of State clearly states at the top of the form:

Note: If filing for partisan office *and not a major party candidate*, you must file *both an affidavit of candidacy and a nominating petition*: 'Candidates for any

¹Section II, *infra*, dispenses with Petitioner's specious equal protection argument as to this reasonable and constitutional statutory distinction.

partisan office who do not seek the nomination of a major political party shall be nominated by nominating petition as provided in sections 204B.07 and 204B.08, and...shall file an affidavit of candidacy as provided in section 240B.06.' (Minn. Stat. section 204B.03) [emphasis added].

(Haapoja Aff., Exhibit B.)

Minor party candidates that must file a nominating petition as a condition of gaining access to the Minnesota primary and election ballots are required to obtain signatures on the nominating petition during the two (2) week time period within which candidates may file for public office. Minn. Stat. § 204B.08, subd. 1. This statute does *not* mention or refer to any time parameters for signatures on a "petition in place of filing fee", discussed in the next section.

Petition in Place of Filing Fee

In addition to the affidavit of candidacy or nominating petition (as appropriate), all Minnesota candidates must pay a filing fee *or* file a "petition in place of filing fee" under Minn. Stat. § 204B.11. No specific format for the petition in place of filing fee exists under Minnesota law (although content rules at Minnesota Rules Chapter 8205 are applicable if within the authority delegated by Minn. Stat. § 204B.071). Minor party candidates may use a "nominating petition" to also serve as the petition in place of filing fee, under certain conditions set forth within Minn. Stat. § 204B.11, subd. 2:

Subd. 2. Petition in place of filing fee. At the time of filing an affidavit of candidacy, a candidate may present a petition in place of the filing fee. The petition may be signed by any individual eligible to vote for the candidate. A nominating petition filed pursuant to section 204B.07...is effective as a petition in place of a filing fee if the nominating petition includes a prominent statement informing the signers of the petition that it will be used for that purpose. The number of signatures on a petition in place of a filing fee shall be as follows:...(b) for a congressional office, 1,000...An official with whom petitions are filed shall make sample forms for petitions in place of filing fees available upon request.

In stating the requirements for a valid petition in place of filing fee, Minn. Stat. § 204B.11, subd. 2 refers to Minn. Stat. § 204B.07 does not refer to Minn. Stat. § 204B.08, subd. 1, which states:

204B.08 Signing petitions. Subdivision 1. Time for signing. *Nominating petitions* shall be signed during the period when petitions may be filed as provided in section 204B.09 (emphasis added).

To summarize, the filing requirements under Chapter 204B for major party and minor party candidates are as follows:

Candidate Type	Statutory Requirements
Major party candidates	<p><u>204B.03</u>: candidate files affidavit of candidacy (<i>No reference to 204B.08</i>)</p> <p><u>204B.09</u>: establishes filing period as not more than 70 days nor less than 56 days before the state primary</p> <p><u>204B.11</u>: candidate pays filing fee or files petition in place of filing fee. (<i>No reference to 204B.08</i>). No specified form for petition in place of filing fee (but subject to Rule 8205), <i>no time parameters on signatures</i>.</p> <p><u>Rule 8205</u>: prescribes format/content of petitions; <i>no time parameters on signatures</i>.</p> <p><i>No reference within 204B.03 or 204B.11 to: (i) 204B.08 time parameters relating solely to nominating petition signatures; or (ii) any time parameters for signatures on the petition in place of filing fee.</i></p>
Minor party candidates	<p><u>204B.03</u>: candidate files <i>nominating petition</i> and affidavit of candidacy</p> <p><u>204B.07</u>: governs contents of <i>nominating petition</i></p> <p><u>204B.08, subd. 1</u>: <i>nominating petition</i> must be signed during period for filing at 204B.09 (<i>no reference to petition in lieu of filing fee or 204B.11</i>)</p> <p><u>204B.09</u>: establishes filing period as not more than 70 days nor less than 56 days before the state primary</p> <p><u>204B.11</u>: candidate pays filing fee or files petition in place of filing fee. A nominating petition will suffice as petition in place of filing fee <i>if</i> it includes 204B.07 requirements and prominent statement informing the signers that it will be used as a petition in place of filing fee. Otherwise, filing fee must be paid or separate petition in place of filing fee must be filed (no set format but subject to Rule 8205).</p> <p><u>Rule 8205</u>: prescribes format/content of petitions</p>

Notwithstanding the clear statutory distinction between a “nominating petition” and “petition in place of filing fee”, Petitioner’s counsel attempts to engage in rhetorical sleight of hand by *incorrectly* stating at ¶ 10 of the Petition: “Minn. Stat. Section 211B.08 subd. 1 requires that persons signing nominating petitions in lieu of filing fees do so within the fourteen day filing period.” However, the words “in lieu of filing fees” appear nowhere within Minn. Stat. § 204B.08, subd. 1. (In fact, the phrases “nominating petition in lieu of filing fee” and “nominating petition in place of filing fee” appear nowhere within Chapter 204B. Petitioner’s use of this non-existent phrase is intended to commingle two separate types of petitions (and shamefully exploit a minor clerical error) to serve Petitioner’s partisan purposes; however, the relief sought by Petitioner is justified only within the creative imagination of Petitioner’s counsel, not the plain and ordinary meaning of Minn. Stat. § 204B.11.

Petitioner’s strained statutory analysis violates Minnesota canons of statutory construction set forth at Minn. Stat. § 645.08. *Red Wing Mailing Co. v. Willcuts*, 15 F.2d 626 (C.C.A. 1927), *cert. denied*, 47 S.Ct. 476, held that a statute should receive natural and not strained construction, and its plain, obvious and rational meaning should be adhered to. Or, as stated in *Lynch v. Alworth-Stephens Co.*, 294 F. 190 (C.C.A.1923), *aff’d*, 45 S.Ct. 274, “the plain, obvious, and rational meaning of a statute should always be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute intellect would discover.” (Cited in annotations to Minn. Stat. § 645.08.)

Another basic rule of statutory construction, *expressio unius est exclusio alterius*, is that “the express mention of one thing is the exclusion of another”. Minn. Stat. § 645.08; *Northern Pac. Railway Co. v. City of Duluth*, 67 N.W.2d 635 (Minn. 1954); *Green-Glo Turf Farms, Inc. v. State*, 347 N.W.2d 491 (Minn. 1984). Under this doctrine, if the Minnesota Legislature had intended to impose time parameters on signatures to a petition in place of filing fee, Minn. Stat. §

204B.08, subd. 1 would not have referred only to a “nominating petition” but instead would the have also referred to a “petition in place of filing fee” or used general language such as “any petition under this chapter”.

By referring only to nominating petitions, Minn. Stat. § 204B.08, subd. 1 thereby clearly *excludes* petitions in place of filing fee from the signature time frame limitations. Otherwise, the Minnesota Legislature would have, at Minn. Stat. § 204B.11, subd. 2. (which establishes the qualification requirements of a petition in place of filing fee), cross-referenced Minn. Stat. § 204B.08, subd. 1 (the only cross-reference is to § 204B.07 which relates to nominating petitions used for the dual purpose of a nominating petition and petition in place of filing fee). Nowhere within the description of qualifications of a petition in place of filing fee in § 204B.11 are time parameters imposed on signatures to such petition. Hence, the statute’s plain and ordinary meaning is that no such time parameters exist.

A final important canon of statutory interpretation is that the legislature is presumed to never engage in a useless act. *See Andrus v. Shell Oil Co.*, 46 U.S. 657, 673 (1980); *United States v. Hecla Mining Co.*, 302 F.2d 204, 211 (9th.Cir. 1962); *Thomspon-Stearns-Roger v. Schaffner*, 489 3.W.2d 207, 212 (Mo. 1973)(“legislature will not be charged with having done a useless act”). Minn. Stat. § 204B.11, subd. 2 sets forth the number of signatures required on a petition in place of filing fee (1,000 for congressional office). This number is also contained within Minn. Stat. § 204B.07 relating to nominating petitions (excerpted above). If the phrase “nominating petition” and “petition in place of filing fee” were meant to be used interchangeably throughout Chapter 204B, the requirement for the number of signatures at Minn. Stat. § 204B.11, subd. 2 would be superfluous and useless. Hence, to be given proper meaning, the duplication of the number of signatures required for a nominating petition at § 204B.07 and a petition in place of filing fee at § 204B.11 must be interpreted by this Court to refer to two (2) different petitions with different validity requirements.

As a final matter, Petitioner's wild speculation as to "absurd results", such as candidates collecting and "banking" signatures for use in perpetuity, is wholly irrelevant to the plain and unambiguous statutory distinction between the validity requirements of a nominating petition and a petition in place of filing fee. These flights of rhetorical fancy are not ripe for determination by this Court and are of no relevance as to whether Petitioner has met his heavy burden of proving that Congressman Gutknecht and/or Secretary of State Kiffmeyer, in the instant matter, violated Minnesota election law in a manner which justifies depriving Republican First District primary voters of their choice of candidate for nomination.

Petitioner's apparent (unwarranted) suspicion is that Congressman Gutknecht, or any other candidate, will suddenly "bank" signatures and re-use the same signatures in the 2008 election and forward. However, Petitioner's own Supplemental Brief admits, corroborated by the Pierson Affidavit (and *Exhibit C*) and Alm Affidavit, that Congressman Gutknecht has obtained a new set of signatures on his petition in place of filing fee each and every election cycle from 1994 to 2006 (six (6) elections in a row). As such, Congressman Gutknecht has always complied with the spirit of Minnesota election law (despite the lack of any signature time frame requirement) and obtained new "fresh" signatures each election cycle and no evidence exists to suggest that this pattern of conduct will change. Petitioner therefore raises a straw person argument which relies only on speculation, which therefore lacks persuasive merit and should be disregarded by this Court in its consideration of this matter.

Congressman Gutknecht's Submission to the Minnesota Secretary of State

As a major party candidate, Minn. Stat. § 204B.03 requires Congressman Gutknecht to file with the Minnesota Secretary of State an affidavit of candidacy, and Minn. Stat. § 204B.11 requires Congressman Gutknecht to file a filing fee or petition in place of filing fee. Again, no special format for the petition in place of filing fee exists within Chapter 204B, although certain requirements are triggered if a candidate uses a nominating petition for the dual purpose of both

a nominating petition and petition in place of filing fee. Because Congressman Gutknecht, as a major party candidate, did not need to (and did not) use a nominating petition, these requirements (at Minn. Stat. § 204B.07) are inapplicable to Congressman Gutknecht's petition in place of filing fee.

As he has done in every election since 1994 (without legal incident until this Petition, including filings with former DFL Secretary of State Joan Anderson Growe), on July 5, 2006, Congressman Gutknecht submitted an affidavit of candidacy and petition in place of filing fee. The petition was filed for the sole purpose of avoiding payment of the filing fee, *not* for the purpose of securing ballot access as a minor party candidate via a nominating petition. The representative page from Congressman Gutknecht's petition in place of filing fee (the entirety of which is part of the record as filed by Petitioner's counsel) attached as Exhibit C to the Haapoja Affidavit clearly states at the top in bold and capitalized letters that it is a "PETITION IN PLACE OF FILING FEE" and contained a written representation as required by Minn. Stat. § 204B.11, subd. 2 that the purpose of the petition was to avoid the filing fee requirements of Minn. Stat. § 204B.11.

Therefore, there can be no confusion as to the intent and purpose of the petition submitted by Congressman Gutknecht to the Minnesota Secretary of State: to qualify as a petition in place of filing fee under Minn. Stat. § 204B.11, subd. 2. Because Congressman Gutknecht's purpose was not to achieve ballot access as a minor party candidate under Minn. Stat. § 204B.03, but rather to avoid the filing fee under Minn. Stat. § 211B.11, the petition signature time parameters under Minn. Stat. § 204B.08 does not apply to Congressman Gutknecht's petition in place of filing fee.

The petition in place of filing fee submitted by Congressman Gutknecht to the Minnesota Secretary of State complied in all facets with Minn. Stat. § 204B.11, subd. 2 and Minnesota Rules Chapter 8205. On July 5, 2006, this petition in place of filing fee was accepted by the

Minnesota Secretary of State (as the same have been accepted from Congressman Gutknecht in every election since 1994 by both DFL Secretary of State Joan Anderson Growe and Republican Secretary of State Mary Kiffmeyer). However, in accepting the petition in place of filing fee this year, the Minnesota Secretary of State's office included a minor clerical error in the Receipt by writing the phrase "Nom. Petition in place of filing fee." This error of the Secretary of State's office (and not Congressman Gutknecht), does not constitute grounds for removing Congressman Gutknecht's name from the primary or general election ballot, as discussed at Section I(B)(4), *infra*.

Other than the date of signature requirement Petitioner attempts to impose by rhetorical fiat, Petitioner does not dispute that Congressman Gutknecht's affidavit of candidacy and petition in place of filing fee fully complied with Chapter 204B.11 or Minnesota Rules Chapter 8205. Minn. Stat. §§ 204B.07 and 204B.08 are inapplicable because Congressman Gutknecht, as a major party candidate, does not need to use a nominating petition for the dual purpose of seeking eligibility to the ballot and avoiding a filing fee. Accordingly, Congressman Gutknecht's affidavit of candidacy and petition in place of filing fee were submitted in good faith in full compliance with Minnesota law, and the Petition should be dismissed in its entirety with prejudice.

B. The Minnesota Secretary of State's promulgated rules and/or forms cannot and do not amend or alter clear and unambiguous statutes, and any such purported amendment or alteration is outside of the scope of the Minnesota Secretary of State's regulatory authority.

In addition to Petitioner's strained statutory interpretation discussed at I(A), *supra*, Petitioner argues that the effect of rules promulgated by the Minnesota Secretary of State pursuant to Minn. Stat. § 204B.071, as well as the nominating petition form published by the Minnesota Secretary of State, collectively or singularly impose a deadline on the collection of

signatures on a petition in place of filing fee, despite the clear lack of a deadline under Minnesota law. As discussed below, these assertions are without merit.

1. The Secretary of State's rules do not impose a time deadline on signatures to a petition in place of filing fee.

Minn. Stat. § 204B.071 provides:

204B.071 Petitions; rules of the secretary of state. The secretary of state shall adopt rules governing the manner in which petitions required for any election in this state are circulated, signed, filed, and inspected. The secretary of state shall provide samples of petition forms for use by election officials.

This statute does no more than what it says: it authorizes the Minnesota Secretary of State to “adopt rules governing the manner in which petitions required for any election in this state are circulated, signed, filed, and inspected.” Under this authorizing statute, the Minnesota Secretary of State promulgated rules at Minnesota Rules Chapter 8205 Parts 1010 and 1030.

Petitioner's Brief at p. 4 attempts, through further rhetorical sleight of hand, to convert these rules into an application of Minn. Stat. § 204B.08, subd. 1 to *all* petitions under Chapter 204B (thereby implicitly encompassing petitions in place of filing fee). However, no provisions within Minnesota Rules Chapter 8205 Parts 1010 and 1030 state, either explicitly or implicitly, that Minn. Stat. § 204B.08, subd. 1 applies to petitions in place of a nominating fee under Minn. Stat. § 204B.11, or to all petitions discussed in Chapter 204B.

The only Rules cited by Petitioner are Rule 8205.1010 subpart 2(H), which merely requires that “each signature line on a petition have a space for the date of signature” and Rule 8205.1030 subpart 2 which requires that “the person signing the petition shall complete the signature date...on the petition”. However, Petitioner incorrectly attempts to transform these rules into imposition of a time frame deadline within which the signature must be affixed to a petition in place of filing fee. However, Minnesota Rules Chapter 8205 nowhere explicitly imposes a time frame for signatures to a placed on a petition in place of filing fee for the petition to be valid and, more importantly, no such time frame exists under Chapter 204B. In any event

(as discussed in greater detail at (3), *infra*), these rules and the sample petition published by the Minnesota Secretary of State cannot and do not amend or alter the clear statutory omission within Chapter 204B of a time frame within which signatures to a petition in place of filing fee must be received.

Petitioner's claim that these Rules impose a signature time frame for petition validity where none exists is further contradicted by the Minnesota Secretary of State's website, which states (emphasis added):

Petition in place of filing fee (204B.11)

- Instead of paying the filing fee, a candidate may present this petition at the same time the affidavit of candidacy is filed. The petition may be signed by any individual eligible to vote for the candidate.
-
- A petition in place of filing fee may be signed at any time. A nominating petition that is also used for a petition in place of filing fee may only be signed during the filing period.

(Haapoja Aff., Exhibit A.) The Secretary of State's website therefore accurately and succinctly states what Petitioner's counsel fails to grasp or accept: Minn. Stat. § 204B.08, subd. 1 **does not apply to petitions in place of filing fee**. Neither do any rules promulgated by the Minnesota Secretary of State.

Accordingly, because Congressman Gutknecht's Affidavit of Candidacy and petition in place of filing fee complied with all requirements of Minn. Stat. §§ 204B.03 and 204B.11, and Minnesota Rules Chapter 8205, Congressman Gutknecht's name must remain on the ballot. Petitioner's willful misstatement and misrepresentation of the Secretary of State's rules and position as to time deadlines for signing a petition in place of filing fee is without merit and does not justify the drastic result Petitioner seeks.

2. The Secretary of State's rules cannot trump the clear provisions of a statute.

Moreover, even if Petitioner's misstatement were true as a factual matter, and the Minnesota Secretary of State *had* attempted to promulgate a rule applying the time restrictions within Minn. Stat. § 204B.08, subd. 1 to a petition in place of filing fee, such a rule would be wholly void, unenforceable and of no force or effect under the Minnesota administrative procedure act and common law.

The Minnesota administrative procedure act, Minnesota Statutes Chapter 14 (modeled after the federal Administrative Procedure Act) clearly and unequivocally states that a delegation of authority by the Minnesota Legislature to an administrative or executive branch agency (such as the Minnesota Secretary of State) is limited by Minnesota law. Minn. Stat. § 14.05, subd. 1 states:

14.05 General authority

Subdivision 1. Authority to adopt original rules restricted. Each agency shall adopt, amend, suspend or repeal its rules in accordance with the procedures specified in sections 14.001 to 14.69, *and only pursuant to authority delegated by law and in full compliance with its duties and obligations.*

This authority does not and cannot include the authority to amend Minnesota statutes. *See Hirsch v. Bartley-Lindsay Co.*, 537 N.W.2d 480 (Minn. 1995)(agency has power to issue binding administrative rules only if, *and to the extent*, legislature has authorized it to do so: legislature states what agency is to do and how it is to do it).

Nowhere within Minn. Stat. § 204B.071 is the Minnesota Secretary of State authorized or empowered to alter or amend statutory deadlines relative to dates of signatures on a petition in place of filing fee (or a nominating petition); imposition of the same must occur, if at all, through legislative action **alone**. Because the Minnesota Legislature has chosen to impose a signing deadline on a nominating petition (applicable to only minor party candidates), but not a petition in place of filing fee (applicable to all candidates), the Secretary of State's authority to promulgate rules "governing the manner in which" the petitions are "circulated, signed, filed,

and inspected” does not include the authority to impose, by rule, deadlines where none exist, any more than it includes the ability to expand or shrink, by rule, deadlines which do statutorily exist. Absent legislative authority to set deadlines for dates on which a petition in place of filing fee must be signed, the Minnesota Secretary of State is, quite simply, powerless to impose such a deadline.

Accordingly, Petitioner’s references to Minnesota Secretary of State Rules (discussed at I(B)(1), *supra*) do not and cannot constitute valid grounds for this Court to order the removal of Congressman Gutknecht’s name from the 2006 primary and general election ballots.

3. The Secretary of State’s inclusion of a line for a signature date on a sample nominating petition does not constitute imposition of a time deadline on signatures to a petition in place of filing fee.

As stated above, Minn. Stat. § 204B.071 authorizes the Minnesota Secretary of State to “provide *samples* of petition forms for use by election officials.” Petitioner’s attempt to impose a deadline, where none statutorily exists, based on a line on a sample petition form, lacks any justification or merit.

First and foremost, the line for the date on the sample nominating petition is for the purpose of determining qualification of the nominating petition under Minn. Stat. § 204B.08, subd. 1 if submitted for purposes of ballot access by a minor party candidate. Minn. Stat. § 204B.11, subd. 2 permits the same form to also be used as a petition in place of filing fee, if all requirements of § 204B.11, subd. 2 and § 204B.07 are met (which do not reference the time deadlines within § 204B.08, subd. 1). Moreover, although the date line complies with the Secretary of State’s rules as to the requirement of a date, the date of signing itself is of no consequence when a petition in place of filing fee is submitted for the sole purpose of avoiding the filing fee (and not for the dual purpose of also constituting a nominating petition).

Petitioner’s attempt to ascribe more significant meaning to this sample form (which does not even represent the only permissible form of a petition in place of filing fee), and to thereby

serve the partisan goal of removing Congressman Gutknecht from the ballot, is without justification and must be denied. Petitioner cites no legal precedent in support of the astounding proposition that a sample form can constitute an amendment to a statute passed by the Minnesota Legislature. As discussed above, the Minnesota Secretary of State is without authority to impose a deadline on the dates within which a petition in place of filing fee must be signed, because the Minnesota Legislature has chosen to apply no such deadline. Hence, regardless of the contents of the sample nominating petition published by the Minnesota Secretary of State, the same cannot and do not effect an amendment of the clear and unambiguous intent and purposes of Minn. Stat. § 204B.11, subd. 2, which imposes no time frame requirement on signatures to a petition in place of filing fee.

4. The Secretary of State's correspondence to Congressman Gutknecht constituted a clerical error and is not sufficient grounds for removing Congressman Gutknecht from the primary or general election ballot.

Upon filing the Affidavit of Candidacy and petition in place of filing fee by Congressman Gutknecht, the Minnesota Secretary of State's office (Elections Division) accepted the documents and issued to Congressman Gutknecht's campaign the Receipt. (Pierson Aff., *Exhibit B.*) On August 11, 2006, the Minnesota Secretary of State's office forwarded to Congressman Gutknecht's campaign supplemental correspondence which represented that the reference "nom. petition" on the Receipt was an administrative clerical error and the Receipt should have indicated "Minnesota Petition in Place of Filing Fee pursuant to Minn. Stat. 204B.11". (Id., *Exhibit B.*)

Despite Petitioner's assertions, the Secretary of State's inadvertent placement of "nom. Petition in place of filing fee" on the Receipt does not and cannot constitute grounds for removing Congressman Gutknecht's name from the primary or general election ballot. Minn. Stat. §§ 204B.03 and 204B.11 do not condition ballot qualification upon issuance by the Minnesota Secretary of State of a properly-worded receipt. Rather, the only requirement for

ballot access is that the appropriate documents be timely filed by the candidate in question which, as shown above, Congressman Gutknecht has done.

Any clerical error on the Receipt is a harmless and non-substantive error by the Minnesota Secretary of State's office alone, not the fault of Congressman Gutknecht, and hence in no way does this clerical error justify the drastic relief sought by Petitioner. Petitioner's shameful attempt to turn a clerical error into a removal of Congressman Gutknecht's name from the primary or general election ballot must be denied by this Court.

II. THE EQUAL PROTECTION CLAUSE AND *BUSH V. GORE* DO NOT MANDATE REMOVAL OF CONGRESSMAN GUTKNECHT'S NAME FROM THE PRIMARY OR GENERAL ELECTION BALLOT.

In Petitioner's Supplemental Brief, Petitioner's counsel makes the astonishing argument that the Equal Protection Clause to the United States Constitution, as interpreted by the U.S. Supreme Court in *Bush v. Gore*, 531 U.S. 98 (2002), mandates the removal of Congressman Gutknecht's name from the 2006 primary and election ballots because minor party candidates in Minnesota are subject to different ballot access rules than major party candidates under Chapter 204B (explained in great detail above).

First and foremost, Petitioner does not even have standing to raise this argument because Petitioner is not a minor party candidate seeking ballot access in the State of Minnesota. Moreover, no such candidate is a party or intervenor to this litigation. Hence, equal protection claims assertable by such third party candidates, even if applicable to the issue before this Court (which as explained below they are not), may not be raised by Petitioner because this Court can grant no relief to Petitioner that the equal protection clause might demand.

As a related matter, even if an equal protection violation exists due to the separate treatment of major and minor party candidates within Minnesota Statutes § 204B.03 (and related provisions at 204B.06-204B.11), the relief requested by Petitioner turns the equal protection clause on its head. The proper remedy for a valid equal protection challenge to Chapter 204B's

ballot access provisions would be to *lessen* the restrictions applicable to minor party candidates, thereby striking as unenforceable the two (2)-week time parameters currently imposed on signatures to a nominating petition. Petitioner's drastic relief of removing Congressman Gutknecht from the ballot would not assist a single minor party candidate from gaining ballot access more easily and have the further wholly improper effect of depriving those intending to vote in the First District Republican primary of their opportunity to confer Republican nomination on the Congressman who has represented them since 1994.

Moreover, any equal protection issues relevant to Chapter 204B relate to the distinction at § 204B.03 requiring major party candidates to submit an affidavit of candidacy and minor party candidates to submit a nominating petition and not to the filing fee provisions at Minn. Stat. § 204B.11. Minnesota Statutes § 204B.11 relating to a "petition in place of filing fee" treats all candidates (whether from a major party or minor party) exactly the same. The time parameters requiring signatures on the *nominating petition* submitted by a minor party candidate at Minn. Stat. § 204B.08, subd. 1 is not imposed on a *petition in place of filing fee* also submitted by a minor party candidate under Minn. Stat. § 204B.11 to avoid payment of the filing fee. Minor party candidates are permitted use the same petition for dual purposes; however, nothing within Chapter 204B requires the same. If a minor party candidate chose to submit a petition in place of filing fee separate from the nominating petition, the signature date time parameters within Minn. Stat. § 204B.08 would not apply to the petition in place of filing fee (but would nevertheless apply to the nominating petition).

As a final note, Petitioner's citation to and purported reliance on *Bush v. Gore* is wholly misplaced. *Bush v. Gore* involved two (2) major party candidates for President of the United States challenging statutory recount procedures under Florida law. This decision therefore has nothing to do with Minnesota statutory filing fee requirements, and provisions for avoiding the

payment thereof. Accordingly, Petitioner's attempted reliance on *Bush v. Gore* to support the requested relief is wholly unjustified by the facts, dicta or holding of *Bush v. Gore*.

Contrary to Petitioner's assertions, the U.S. Supreme Court, in analyzing the Minnesota election law, has held (as the U.S. Supreme Court has consistently held in a long line of cases) that major party and minor party candidates may be treated differently in terms of ballot access without violating the Equal Protection Clause of the U.S. Constitution. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997)(denying minor political party challenge to Minnesota's antifusion laws prohibiting candidates from appearing on ballot as candidate of more than one political party). The *Timmons* court explicitly stated (emphasis added):

[T]he [s]tates' interest permits them to enact reasonable election regulations *that may, in practice, favor the traditional two-party system...and that temper the destabilizing effects of party-splintering and excessive factionalism*. The Constitution permits the Minnesota Legislature to decide that political stability is best served through a healthy two-party system. *See Rutan v. Republican Party of Ill.* 497 U.S. 107 (1990)(Scalia, J. dissenting)(*"The stabilizing effects of such a [two-party] system are obvious"*); *Davis v. Bandmeier*, 478 U.S. 109, 144-145 (1986)(O'Connor, J., concurring)(*"There can be little doubt that the emergence of a strong and stable two-party system in this country has contributed enormously to sound and effective government"*); *Branti v. Finkel*, 445 U.S. 507, 532 (1980)(Powell, J., dissenting)(*"Broad-based political parties supply an essential coherence and flexibility to the American political scene."*)

And while an interest in securing the perceived benefits of a stable two-party system will not justify unreasonably exclusionary restrictions,...[s]tates need not remove all of *the many hurdles third parties face in the American political arena today*.

520 U.S. at 367; *see also Burdick v. Takushi*, 504 U.S. 428 (1992)(*"states may, and inevitably must, enact reasonable regulations of parties, elections and ballots to reduce election- and campaign-related disorder"*); *McLain v. Meier*, 851 F.2d 1045 (8th.Cir. 1988)(statutory requirement that third parties gather 7,000 signatures 55 days before June primary in order to appear on ballot was no more burdensome than necessary to support State's compelling interest and was constitutional restriction on voter's right to choose candidate).

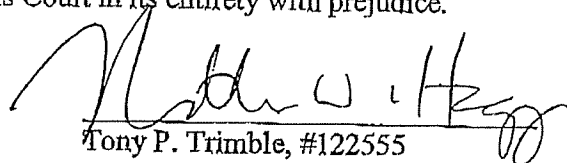
Finally, because the statutory analysis at I, *supra*, indicates that no violation of Minnesota election law has occurred, this Court need not, *and should not*, address the merits of Petitioner's equal protection argument. *See In Re Senty-Haugen*, 583 N.W. 2d 266, 267, fn. 3 (Minn. 1998)(Minnesota Supreme Court's general practice is to avoid a constitutional ruling if there is another basis on which a case can be decided); *see also Erlandson*, 659 N.W.2d at 733, fn. 7 (*citing In Re Senty-Haugen* in refusing to find equal protection violation).

Because nothing within the Equal Protection clause to the U.S. Constitution mandates or even remotely suggests the relief requested by Petitioner, the Petition should be denied.

CONCLUSION

Petitioner has failed to meet his heavy burden of proof to clearly establish that Minnesota law mandates the removal of Congressman Gutknecht's name from the 2006 primary or election ballots. The drastic remedy that Petitioner seeks would result in significant prejudice to Congressman Gutknecht and those intending to vote in the September 2006 Republican primary for the First District, with no justification under Minnesota statutes or case law. Accordingly, this purely political Petition must be dismissed by this Court in its entirety with prejudice.

Dated: August 17, 2006



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Congressman Gil Gutknecht*

Petition in place of filing fee (204B.11)

- Instead of paying the filing fee, a candidate may present this petition at the same time the affidavit of candidacy is filed. The petition may be signed by any individual eligible to vote for the candidate.
-
- A petition in place of filing fee may be signed at any time. A nominating petition that is also used for a petition in place of filing fee may only be signed during the filing period.

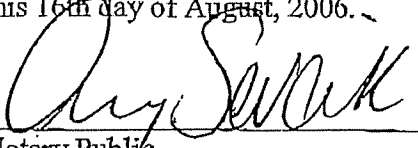
3. Attached hereto as Exhibit B is a true and correct copy of a blank affidavit of candidacy downloaded from the Minnesota Secretary of State's website, www.sos.state.mn.us, which states in pertinent part:

Note: If filing for partisan office *and not a major party candidate*, you must file both an affidavit of candidacy and a nominating petition: 'Candidates for any partisan office who do not seek the nomination of a major political party shall be nominated by nominating petition as provided in sections 204B.07 and 204B.08, and...shall file an affidavit of candidacy as provided in section 240B.06.' (Minn. Stat. section 204B.03).

4. Attached hereto as Exhibit C is a true and correct copy of a representative page from the petition in place of filing fee submitted by Congressman Gutknecht to the Minnesota Secretary of State on July 5, 2006. The entire petition in place of filing fee is part of the record as filed by Petitioner's counsel.

FURTHER YOUR AFFIANT SAYETH NOT.

Subscribed and sworn to before me
this 16th day of August, 2006.


Notary Public

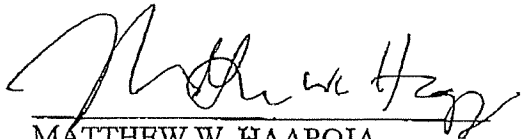

MATTHEW W. HAAPOJA



EXHIBIT A



Petitions

Nominating Petitions (204B.07)

- A nominating petition must state:
 - The office sought;
 - The candidate's name and resident address;
 - The candidate's political party or political principle in not more than three words. No candidate for partisan office shall use the term "nonpartisan" as a political party or principle. No part of the name of a major political party may be used to designate the political party or principle of a candidate who files by nominating petition.
- No nominating petition shall contain the name of more than one candidate except a petition jointly nominating individuals for governor and lieutenant governor.
- **Nonpartisan office:** Nominating petitions usually not required except when there is a vacancy in nomination for the office (i.e. a candidate withdraws). A nominating petition may then be filed within one week after the vacancy in nomination occurs, but not later than four calendar days before the election (204B.13).
- **Presidential electors:** A nominating petition is required for presidential electors other than those nominated by major political parties. Major party candidates for presidential electors are certified under M.S. 208.03 (204B.07, Subd. 2)
- It is not necessary to certify the signatures on a nominating petition. The signer must list an address next to the signature.
- **Nominating petitions shall be signed only during the filing period (204B.08).**
- A signatory must be eligible to vote for the candidate who is nominated, and they may only sign once for each candidate.
- Number of signatures needed; for other offices, see 204B.08(3)
 - State office/U.S. Senator: 1 percent of individuals voting in the state at the last general election, or 2000, whichever is less.
 - Congressional office: 5 percent of individuals voting in the district at the last general election, or 1000, whichever is less.
 - County/Legislative office: 10 percent of individuals voting in the county at the last general election, or 500, whichever is less.
- Candidates who are absent from the state during the filing period may present petitions during the seven days immediately preceding the candidate's absence. **In this case, nominating petitions may be signed during the 14 days immediately preceding the date when the affidavit of candidacy is filed (204B.09).**
- The filing officer must deliver an acknowledgement (like a receipt) of the petition to the candidate on the day the petition is filed. The officer shall number the petitions in the order received, and they must be available for public inspection (204B.10).
- The filing officer must inspect the petitions to verify that there are a sufficient number of valid signatures (204B.10).
- The OSS must certify to county auditors the names of all candidates nominated by petition. This occurs at the same time the OSS certifies the candidates who are nominated at the primary (204B.10).
- If someone nominated by petition is ineligible to vote (because of a felony, or treason, or guardianship of

the person, or because of legal incompetence), the filing officer shall not certify the individual's petition (204B.10).

Petition in place of filing fee (204B.11)

- Instead of paying the filing fee, a candidate may present this petition at the same time the affidavit of candidacy is filed. The petition may be signed by any individual eligible to vote for the candidate.
- A nominating petition may also be used as a petition in place of a filing fee.
- A petition in place of filing fee may be signed at any time. A nominating petition that also is used for a petition in place of filing fee may only be signed during the filing period.
- Number of signatures needed on a petition in place of filing fee: for other offices, see 204B.11(2)
 - Statewide office/U.S. president/U.S. senator: 2000;
 - Congressional office: 1000;
 - County/Legislative/District judge office: 500.
- The filing official shall make sample forms for petitions in place of filing fees available upon request.

M.R. 8205.1010 (Form of petitions)

- Petition paper cannot be larger than 8-1/2 inches wide and 14 inches long. The signer's oath and the signature lines must be on the same sheet of paper.
- Petition language cannot be smaller than 8-point type.
- Each page must have a short title describing the purpose of the petition.
- If the purpose of the petition is to put a question on the ballot, each petition may have a statement of 75 words or less summarizing the ballot question.
- Each page must have the signer's oath in 12-point type. If not specified by statute, the oath must be: "**I swear (or affirm) that I know the contents and purpose of this petition and that I signed the petition only once and of my own free will.**"
- Each page must have this statement above the signature lines: "**All information must be filled in by person(s) signing the petition unless disability prevents the person(s) from doing so.**"
- Each page also must have this statement: "**All information on this petition is subject to public inspection.**"
- Each page cannot have more than 20 signature lines, which are consecutively numbered. Each line must have space for the date of signature, a signature, each signatory's year of birth, printed first, middle, and last name, and residence address, municipality, and county.

M.R. 8205.1020 (Circulating petitions)

- Petitioners may circulate photocopies of a sample petition page.

M.R. 8205.1030 (Signing petitions)

- The person signing the petition shall complete the signature date, name, year of birth, and residence address on the petition.
- A person unable to complete the petition may ask another for assistance.
- A person may sign a petition only once.

M.R. 8205.1040

- **Filing officer**
 - OSS is filing officer if petition is for an office to be voted on in more than one county.
- **Filing procedures**
 - Petitioner must file entire petition to the filing officer, by mail, messenger, or in person.
 - Petition is effectively filed upon receipt by filing officer.
 - Petition pages may only be altered by the filing officer for verification purposes.
- **Receipt**
 - Filing officer must provide a receipt which notes the type of petition filed, the name, address, and telephone number of the person submitting the petition, the date when the petition is filed, and total number of pages in the petition.

M.R. 8205.1050 (Verifying petitions)

- The filing officer must make sure the petition complies with the form requirements and must inspect it to determine if the required number of eligible signatories has signed it.
- If the required number of eligible signatories has not signed the petition, the filing officer must notify the petitioner of this fact and must add the number of additional signatures needed.
- If the petition satisfies the form requirements and has been signed by the required number of qualified signatories during the applicable time period, the filing officer shall notify the petitioner that the petition is sufficient.
- The filing officer shall complete the verification of a petition as soon as practicable but no later than ten working days after the day on which the petition was filed.

EXHIBIT B



Office of the Minnesota Secretary of State

Filing # _____
Cash/Check # _____
Amount \$ _____

Affidavit of Candidacy

All information on this form is available to the public. Information provided will appear on the Secretary of State's website at www.sos.state.mn.us.

Note: If filing for partisan office and not a major party candidate, you must file both an affidavit of candidacy and a nominating petition: "Candidates for any partisan office who do not seek the nomination of a major political party shall be nominated by nominating petition as provided in sections 204B.07 and 204B.08, and . . . shall file an affidavit of candidacy as provided in section 204B.06." (Minn. Stat. section 204B.03).

Please print or type.

Name (as it will appear on the ballot): _____		
Office Sought: _____	District #: _____	
For Partisan Office Provide Political Party or Principle: _____		
For Judicial Office Provide Name of Incumbent: _____		
Legal Residence Address		
Street Address: _____		
City: _____	State: _____	Zip: _____
Campaign Contact Information		
Street Address: _____		
City: _____	State: _____	Zip: _____
Website: _____	Email: _____	
Phone Number: (____) _____		

For all offices, I swear (or affirm) that this is my true name or the name by which I am generally known in the community.

If filing for a state or local office, I also swear (or affirm) that:

- I am eligible to vote in Minnesota;
- I have not filed for the same or any other office at the upcoming primary or general election;
- I am, or will be on assuming office, 21 years of age or more;
- I will have maintained residence in this district for at least 30 days before the general election; and
- If a major political party candidate, I either participated in the party's most recent precinct caucuses or intend to vote for a majority of that party's candidates at the next general election.

If filing for one of the following offices, I also swear (or affirm) that I meet the requirements listed below:

- **United States Senator** - I will be an inhabitant of this state when elected and I will be at least 30 years old and a citizen of the United States for not less than nine years on the next January 3rd, or if filled at special election, within 21 days after the election.
- **United States Representative** - I will be an inhabitant of this state when elected and I will be at least 25 years old and a citizen of the United States for not less than seven years on the next January 3rd, or if filled at special election, within 21 days after the election.
- **Governor or Lieutenant Governor** - I will be at least 25 years old on the first Monday of the next January and a resident of Minnesota for not less than one year on election day. I am filing jointly with _____.
- **Supreme Court Justice, Court of Appeals Judge, District Court Judge, or County Attorney** - I am learned in the law and licensed to practice law in Minnesota. My Minnesota attorney license number is _____.
- **State Senator or State Representative** - I will be a resident of Minnesota not less than one year and of this district for six months on the day of the general or special election.
- **County Sheriff** - I am a licensed peace officer in Minnesota. My Board of Peace Officer Standards and Training license number is _____.
- **School Board Member** - I have not been convicted of an offense for which registration is required under Minnesota Statutes, section 243.166.

Candidate Signature _____

Date _____

Subscribed and sworn before me this

_____ day of _____.

(Notary stamp)

Notary public or other officer empowered to
take and certify acknowledgments.

EXHIBIT C

MINNESOTA PETITION IN PLACE OF FILING FEE
2006 General Election

We, the undersigned eligible voters, residing in the election district for the office set forth below, understand that it is intended that this petition be presented in place of the filing fee otherwise required by law by Gil Gutknecht at the time of filing an affidavit of candidacy for the office of United States House of Representatives, First District, to be voted on at the general election to be held on November 07, 2006, as provided by *Minnesota Statutes*, section 204B.11, subdivision 2.

SIGNER'S OATH

"I swear (or affirm) that I know the contents and purpose of this petition and that I signed the petition only once and of my own free will."

ALL INFORMATION ON THIS PETITION IS SUBJECT TO PUBLIC INSPECTION

*****ALL INFORMATION MUST BE FILLED IN BY PERSON(S) SIGNING THE PETITION UNLESS DISABILITY PREVENTS THE PERSON(S) FROM DOING SO.*****

	DATE	SIGNATURE	YEAR OF BIRTH	PRINT FIRST, MIDDLE, AND LAST NAME	RESIDENCE ADDRESS (number and street or box and route number)	CITY OR TOWNSHIP	COUNTY
1.	7/2/06	Viola Miller	1930	Viola Elizabeth Miller	25473-533 Rd	Plainville	Washington
2.	7/2/06	Delores Wood	1923	Delores Louise Wood	100 3rd ave N.E.	Plainview	Washington
3.	7/2/06	Kathy Lantz	1959	Kathy Anne Lantz	220 2nd St NW	Plainville	Washington
4.	7/2/06	Meghan Lantz	1986	Meghan Sue Lantz	220 2nd St NW	Plainville	Washington
5.	7/2/06	Jeff Bohler	1965	Jeffrey David Bohler	27 9th Ave NE	Rochester	Olmsted
	7/2/06	Nicole Bohler	1972	Nicole Therese Bohler	27 9th Ave NE	Rochester	Olmsted
	7-10-06	Paul C. Aarsvold	1971	Paul Christopher Aarsvold	12443 G Rd #41	Altura	Winona
	7/2/06	Jean A. Aarsvold	1958	Jean A. Aarsvold	1440 6th St NW	Plainville	Washington
	7/2/06	John S. Vriezen	1962	John S. Vriezen	1489 Windbreak Ct, NE	Roch.	MN
	7/2/06	Mike A. Lee	1954	Mike A. Lee	14327 44th St.	EMPA	MN

M.S. 204B.11 SUB 2, M.S. 204B.07, M.R. 8225.1010

NO. 3744 P. 39/55

TRIMBLE & ASSOCIATES

AUG. 17, 2006 2:01PM

STATE OF MINNESOTA

IN SUPREME COURT

Court File No. A06-1508

Louis H. Reiter,

Petitioner,

vs.

**AFFIDAVIT OF
NELS PIERSON**

Mary Kiffmeyer, individually and as
Secretary of State of Minnesota;

Respondent

and

Congressman Gil Gutfnecht,

Intervenor-Respondent.

STATE OF MINNESOTA)
) ss.
COUNTY OF OLMSTED)

1. I am the current campaign manager for Gutfnecht for Congress, the campaign committee for Intervenor-Respondent Congressman Gil Gutfnecht ("Congressman Gutfnecht"), the incumbent United States Representative from the First Congressional District of the State of Minnesota.

2. On July 5, 2006, I was with Congressman Gutfnecht when he filed with the Minnesota Secretary of State Elections Division an affidavit of candidacy ("Affidavit of Candidacy") and petition in lieu of filing fee pursuant to Minnesota Statutes §§ 204B.03 and 204B.11 relative to his candidacy for the Republican nomination for United States Representative from the First District. A true and correct copy of Congressman Gutfnecht's

Affidavit of Candidacy, indicating "Petition" in the upper right-hand corner with respect to the filing fee, is attached as Exhibit A hereto.

3. Acting under my direction and supervision, Congressman Gutknecht's campaign staff and volunteers gathered signatures on a petition in place of filing fee in accordance with our understanding of Minnesota election law and rules promulgated by the Secretary of State of Minnesota that these signatures could be gathered at any time after the Minnesota Secretary of State made the petition form available.

4. Congressman Gutknecht's campaign staff and volunteers collected these signatures based on forms published and made available by the Minnesota Secretary of State's office, as downloaded by myself and others from Congressman Gutknecht's campaign from the Minnesota Secretary of State's website.

5. The purpose of Congressman Gutknecht's utilization of the petition in lieu of filing fee was to avoid payment of the filing fee requirement under Minnesota Statutes § 211B.11.

6. Congressman Gutknecht's campaign did not submit the petition in lieu of filing fee for the purpose of seeking placement of the name of Congressman Gutknecht's name on the September 2006 primary ballot as a minor party candidate. Rather, Congressman Gutknecht is a candidate for the Republican party nomination and received the endorsement of the delegates of the Republican Party of Minnesota from the First District at a congressional district endorsing convention.

7. Upon filing the Affidavit of Candidacy and petition in place of filing fee by Congressman Gutknecht, the Minnesota Secretary of State's office (Elections Division) accepted the Affidavit of Candidacy and petition in place of filing fee as submitted and issued to Congressman Gutknecht's campaign a Receipt for Petition ("Receipt"). (Attached hereto as Exhibit B is a true and correct copy of the Receipt.)

8. On August 11, 2006 the Minnesota Secretary of State's office (Elections Division) forwarded to Congressman Gutknecht's campaign supplemental correspondence which represented that the reference "nom. petition" on the Receipt was an error and the Receipt should have indicated "Minnesota Petition in Place of Filing Fee pursuant to Minn. Stat. 204B.11". (Attached hereto as Exhibit B is a true and correct copy of this correspondence.)

9. To the best of my knowledge, in every primary and election since Congressman Gutknecht was first elected in 1994, when Democrat Joan Anderson Growe was Secretary of State of Minnesota, Congressman Gutknecht has availed himself of the opportunity under Minnesota law to file a petition in lieu of filing fee along with his Affidavit of Candidacy. To the best of my knowledge, at least some of the signatures on each of these petitions in lieu of filing fee were gathered by Congressman Gutknecht's campaign staff and volunteers prior to the time period within which candidates are permitted to file to run for Minnesota elective office.

10. To the best of my knowledge, at no time since Congressman Gutknecht's first election to U.S. Congress in 1994 until the present did former Secretary of State Joan Anderson Growe (DFL), current Secretary of State Mary Kiffmeyer (R) or any employee or representative of the Minnesota Secretary of State's Office communicate to Congressman Gutknecht or any of Congressman Gutknecht's campaign staff that signatures on the petition in lieu of filing fee under Minn. Stat. § 204B.11 were required to be collected/obtained during any particular window of time.


11. To the best of my knowledge, at no time since Congressman Gutknecht's first election to U.S. Congress in 1994 until the present did former Secretary of State Joan Anderson Growe, current Secretary of State Mary Kiffmeyer, or any employee or representative of the Minnesota Secretary of State's Office, ever reject Congressman Gutknecht's petition in lieu of filing fee due to untimely signatures on the petition. See correspondence from Secretary of State Joan Anderson Growe and Secretary of State Mary Kiffmeyer attached as Exhibit C hereto.

**SIGNATURE PAGE TO
AFFIDAVIT OF NELS PIERSON**

FURTHER YOUR AFFIANT SAYETH NOT.

Subscribed and sworn to before me
this 16th day of August, 2006.


NELS PIERSON


Notary Public

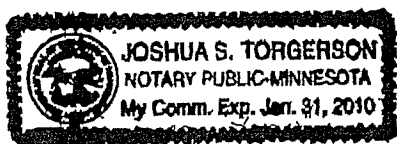


EXHIBIT A

JUL 5 2006 AM 9:01
AUG. 17. 2006 2:13PM



STRIMBLE & ASSOCIATES
Office of the Minnesota
Secretary of State

NO. 3744 P. 45/55
Filing # 6011
Cash/Check # Petition
Amount \$

Affidavit of Candidacy

All information on this form is available to the public. Information provided will appear on the Secretary of State's website at www.sos.state.mn.us.

Note: If filing for partisan office and not a major party candidate, you must file both an affidavit of candidacy and a nominating petition: "Candidates for any partisan office who do not seek the nomination of a major political party shall be nominated by nominating petition as provided in sections 204B.07 and 204B.08, and . . . shall file an affidavit of candidacy as provided in section 204B.06." (Minn. Stat. section 204B.03).

Please print or type.

Name (as it will appear on the ballot): <u>Gil Gutmnecht</u>	
Office Sought: <u>U.S. House of Reps.</u>	District #: <u>1</u>
For Partisan Office Provide Political Party or Principle: <u>Republican</u>	
For Judicial Office Provide Name of Incumbent: <u> </u>	
Legal Residence Address	
Street Address: <u>3936 NW Birmingham Lane</u>	
City: <u>Rochester</u>	State: <u>MN</u> Zip: <u>55901</u>
Campaign Contact Information	
Street Address: <u>P.O. Box 6428</u>	
City: <u>Rochester</u>	State: <u>MN</u> Zip: <u> </u>
Website: <u>www.gilg.org</u>	Email: <u>gil@gilg.org</u>
Phone Number: <u>(800) 756 1994</u>	

For all offices, I swear (or affirm) that this is my true name or the name by which I am generally known in the community.
If filing for a state or local office, I also swear (or affirm) that:

- I am eligible to vote in Minnesota;
- I have not filed for the same or any other office at the upcoming primary or general election;
- I am, or will be on assuming office, 21 years of age or more;
- I will have maintained residence in this district for at least 30 days before the general election; and
- If a major political party candidate, I either participated in the party's most recent precinct caucuses or intend to vote for a majority of that party's candidates at the next general election.

If filing for one of the following offices, I also swear (or affirm) that I meet the requirements listed below:

- United States Senator - I will be an inhabitant of this state when elected and I will be at least 30 years old and a citizen of the United States for not less than nine years on the next January 3rd, or if filled at special election, within 21 days after the election.
- United States Representative - I will be an inhabitant of this state when elected and I will be at least 25 years old and a citizen of the United States for not less than seven years on the next January 3rd, or if filled at special election, within 21 days after the election.
- Governor or Lieutenant Governor - I will be at least 25 years old on the first Monday of the next January and a resident of Minnesota for not less than one year on election day. I am filing jointly with
- Supreme Court Justice, Court of Appeals Judge, District Court Judge, or County Attorney - I am learned in the law and licensed to practice law in Minnesota. My Minnesota attorney license number is
- State Senator or State Representative - I will be a resident of Minnesota not less than one year and of this district for six months on the day of the general or special election.
- County Sheriff - I am a licensed peace officer in Minnesota. My Board of Peace Officer Standards and Training license number is

- School Board Member - I have not been convicted of an offense for which registration is required under Minnesota Statutes, section 243.166.
- County, Municipal, School District, or Special District Office - I meet any other qualifications for that office prescribed by law.

Candidate Signature

07.05.06
Date

Subscribed and sworn before me this

5 day of July - 2006
Mary Ruffner
Notary public or other officer empowered to
take and certify acknowledgments.

(Notary stamp)
EXHIBIT B

EXHIBIT B



Office of the Minnesota
Secretary of State

Receipt for Petition
2006 State General Election

Instructions: All items must be completed before receipt is issued.

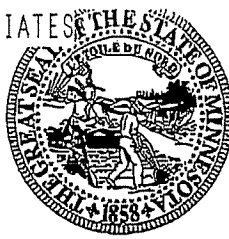
Received:

One Non Petition in Lieu of Filing Fee petition containing 197 pages.
Type of Petition Total Number of Pages

Date filed: 7-5-06

Submitted by: Nels T. Persson III
Name
P.O. Box 6428
Address
Rochester, MN 55903
(507) 252-1450
Telephone

Received by: Mary Kuffmeier 7-5-06
Signature Date



MINNESOTA SECRETARY OF STATE OFFICE

Mary Kiffmeyer, Secretary of State

August 11, 2006

The Honorable Gil Gutknecht
P.O. Box 6428
Rochester MN 55903

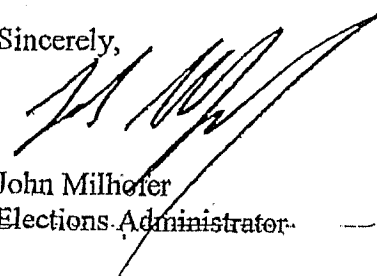
Dear Congressman Gutknecht:

It has come to our attention that the Office of the Secretary of State provided to you a receipt dated July 5, 2006, for "Nom Petition in lieu of filing fee."

Under Minn. Stat. 204B.03 only minor party or independent candidates for partisan office submit nominating petitions.

The petition you submitted was a "Minnesota Petition In Place of Filing Fee," pursuant to Minn. Stat. 204B.11 and the receipt should have so indicated.

Sincerely,



John Milhofer
Elections Administrator

EXHIBIT C



Office of the Secretary of State State of Minnesota

100 Constitution Ave., 180 State Office Bldg.
St. Paul, MN 55155-1299

Joan Anderson Growe
Secretary of State
Elaine Voss
Deputy Secretary of State

General Information: (612)296-2803
Election Division: (612)215-1440
UCC & Business Service Fax: (612)297-5844
Administration & Election Fax: (612)296-9073

July 15, 1998

Representative Gil Gutfknecht
P.O. Box 6428
Rochester, MN 55903

Dear Representative Gutfknecht

We are pleased to inform you that we have finished reviewing your petition in lieu of the filing fee for the office of United States Representative, district one. It has at least 1000 signatures, meeting the requirements for Minnesota Statutes 204B.11, subd. 2. The filing requirement has now been satisfied.

Enclosed is a voluntary disclosure form for public information. You are invited to complete the form and return it to our office. After the filing period, the information provided will be scanned and posted on our web site, www.sos.state.mn.us.

Map request and voter registration list forms are also enclosed, along with the Minnesota Campaign Manual and a letter from the Department of Transportation to assist you with any needed information.

If we can be of any further assistance do not hesitate to contact our office at (651) 215-1440.

Sincerely,

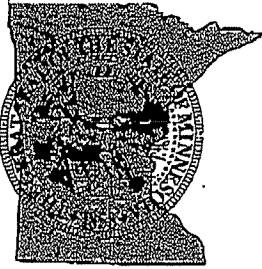
A handwritten signature in cursive script that reads "Rachel M. Larson".

Rachel M. Larson

enc.

"An Equal Opportunity Employer"

Printed with Soy Ink, on Recycled Paper



Mary Kiffmeyer

MINNESOTA SECRETARY OF STATE

July 14, 2000

Representative Gil Gutknecht
3421 16th Avenue SW
Rochester, MN 55901

Dear Representative Gutknecht:

I am pleased to inform you that this office has finished reviewing your petition in lieu of the filing fee in place of paying a \$300 filing fee for the office of United States Representative, District one. Since the petition has at least 1000 signatures, in my opinion, it meets the requirements for Minnesota Statutes 204B.11, subd. 2. The filing requirement with this office has now been satisfied. Please find enclosed a copy of your affidavit of candidacy, and your original check for \$300.

If we can be of further assistance, please contact my office at (651) 215-1440.

Sincerely,

A handwritten signature in cursive script that reads "J. Bradley King".

J. Bradley King
Elections Division Director

Enc.

State of Minnesota

SECRETARY OF STATE**Receipt for Petition
2002 State General Election**

(M.R. §205.1040; 06/01)

*Instructions: All items must be completed before receipt is issued.***Received:**

One Petition in Place of petition containing 151 pages.
Type of Petition Filing Fee Total Number of Pages

Date filed: JULY 8, 2002

Submitted by: Gil Guthecht
Name
1530 Greenview Dr SW
Address
Rochester, MN 55902
800-750-1994
Telephone

Received by:

Mary Kiffmeyer
SignatureJULY 8, 2002Date

STATE OF MINNESOTA

IN SUPREME COURT

Court File No. A06-1508

Louis H. Reiter,

Petitioner,

vs.

**AFFIDAVIT OF
MIKE ALM**Mary Kiffmeyer, individually and as
Secretary of State of Minnesota;

Respondent

and

Congressman Gil Gutknecht,

Intervenor-Respondent.

STATE OF MINNESOTA)
) ss.
COUNTY OF OLMSTED)

1. I was the campaign manager for Gutknecht for Congress, the campaign committee for Intervenor-Respondent Congressman Gil Gutknecht ("Congressman Gutknecht"), the incumbent United States Representative from the First Congressional District of the State of Minnesota, in 1996 and again in 1998.

2. While I was campaign manager of Congressman Gutknecht's campaign, acting under my direction and supervision, Congressman Gutknecht's campaign staff and volunteers gathered signatures on a petition in place of filing fee in accordance with our understanding of Minnesota election law and rules promulgated by the Secretary of State of Minnesota that these

signatures could be gathered at any time after the Minnesota Secretary of State made the petition form available.

3. While I was campaign manager of Congressman Gutknecht's campaign, Congressman Gutknecht's campaign staff and volunteers collected these signatures on forms published and made available by the Minnesota Secretary of State's office.

4. To the best of my knowledge, in every primary and election since Congressman Gutknecht was first elected in 1994, when Democrat Joan Growe was Secretary of State of Minnesota, Congressman Gutknecht has availed himself of the opportunity under Minnesota law to file a petition in lieu of filing fee along with his Affidavit of Candidacy. To the best of my knowledge, at least some of the signatures on each of these petitions in lieu of filing fee were gathered by Congressman Gutknecht's campaign staff and volunteers prior to the time period within which candidates are permitted to file to run for Minnesota elective office.


5. To the best of my knowledge, at no time since Congressman Gutknecht's first election to U.S. Congress in 1994 until the present did former Secretary of State Joan Growe, current Secretary of State Mary Kiffmeyer or any employee or representative of the Minnesota Secretary of State's Office communicate to Congressman Gutknecht or any of Congressman Gutknecht's campaign staff that signatures on the petition in lieu of filing fee under Minn. Stat. § 204B.11 were required to be collected/obtained during any particular window of time.

6. To the best of my knowledge, at no time since Congressman Gutknecht's first election to U.S. Congress in 1994 until the present did former Secretary of State Joan Growe, current Secretary of State Mary Kiffmeyer, or any employee or representative of the Minnesota Secretary of State's Office, ever reject Congressman Gutknecht's petition in lieu of filing fee due to untimely signatures on the petition.


**SIGNATURE PAGE TO
AFFIDAVIT OF MIKE ALM**

FURTHER YOUR AFFLIANT SAYETH NOT.

Subscribed and sworn to before me
this 16th day of August, 2006.



MIKE ALM



Notary Public

